



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शुक्रवार, 6 जून, 2014 / 16 ज्येष्ठ, 1936

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

NOTIFICATION

Shimla, the 2nd June, 2014

No. HPERC/Secy/151.—In exercise of the powers conferred by sub-section (1) of section 92 and clause(zl) of sub-section(2) of section 181 of the Electricity Act, 2003(36 of 2003), read with section 21 of the General Clauses Act, 1897(10 of 1897), and all other powers enabling it in this behalf, and after previous publication, the Himachal Pradesh Electricity Regulatory Commission makes the following amendment in the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, namely:—

REGULATIONS

1. Short title and commencement.—(1) These regulations may be called the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) (Eighth Amendment) Regulations, 2014.

(2) These regulations shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Schedule.—In the Schedule to the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005-

(1) In serial No. 2.—

(A) under the heading “(a) Hydel Projects”, after item (ii), the following item (iii) shall be inserted, namely:—

| | |
|--|--|
| “(iii) Application for subsequent determination of Annual Fixed Cost under each M.Y.T. including periodic review and true up | (iii) 10% of the fee paid for tariff determination under item (i) above. |
|--|--|

Note:— Wherever application is for composite issues only one fee shall be charged.”

(B) the existing item, under the heading “(b) Renewable energy generation projects,” shall be numbered as item no. (1), after item (1) so renumbered, the following item(2) shall be inserted, namely:—

| | |
|---|---|
| “(2) Application for Annual Fixed Cost, performance review, periodic review, including trueup | 5% of the fee paid for tariff determination under item 1 above. |
|---|---|

Note:— Wherever application is for composite issues only one fee shall be charged.”

(2) In column No. (4), against serial no. 5 -B, the following entry shall be substituted, namely:—

| | |
|--|-------------|
| “(i) for projects upto 2MW capacity | ₹ 10,000/- |
| (ii) for projects above 2 MW and upto 5MW capacity | ₹ 20,000/- |
| (iii) for projects above 5 MW capacity | ₹ 50,000/-" |

(3) In column no. (4), against serial no. 6 the following entry shall be substituted, namely:—

| | |
|---|-------------|
| “(i) for projects upto 2MW capacity Nil | Nil |
| (ii) for projects above 2 MW capacity | ₹ 10,000/- |
| (iii) for projects above 5 MW capacity | ₹ 25,000/-" |

(4) In column no. (4), against serial no. 7, after the words “tariff determination”, the words “subject to maximum of Rs. 50,000” shall be inserted.

By order of the Commission
Sd/-
Secretary.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 30th May, 2014*

No. HHC/GAZ/14-58/75-XIII.—It is hereby notified for information of the Civil Judges(Junior Division) concerned that the 62nd Departmental Examination under Rule 18 of the Himachal Pradesh Judicial Service Rules, 2004 will be held in the premises of the High Court, Shimla-171 001 on the following dates:--

| Date | Paper/subject | Time |
|---|--------------------|---------------|
| Thursday July 17, 2014 | Criminal Law | 10 AM to 1 PM |
| | Civil Law | 2 PM to 5 PM |
| Friday July 18, 2014 | Revenue Law-I | 10 AM to 1 PM |
| | Revenue Law-II | 2 PM to 5 PM |
| Saturday July 19, 2014 | Accounts | 10 AM to 1 PM |
| | Constitutional Law | 2 PM to 5 PM |

By order,
 SUSHIL KUKREJA,
 Registrar (Rules),
 Secretary,
Departmental Examination Committee.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA171 001**NOTIFICATION***Shimla, the 28th May, 2014*

No. HHC/GAZ/14-333/2013.—Hon'ble the Acting Chief Justice has been pleased to grant ex post facto sanction of 02 days commuted leave for 8.5.2014 & 9.5.2014 with permission to suffix Second Saturday and Sunday which fell on 10.5.2014 & 11.5.2014 in favour of Shri Nav Kamal, Civil Judge (Junior Division)-cum- JMIC(VII), Shimla, H.P.

Certified that Shri Nav Kamal has joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Shri Nav Kamal would have continued to hold the post of Civil Judge (Junior Division)-cum-JMIC (VII), Shimla, H.P., but for her proceeding on leave for the above period.

By order,
 Sd/-
Registrar General.

HIGH COURTOF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla, the 30th May, 2014

No. HHC/Esst.3(149)/80.--12 days earned leave on and *w.e.f.* 02.06.2014 to 13.06.2014, with permission to prefix Sunday falling on 01.06.2014 and suffix second Saturday & Sunday falling on 14th and 15th June 2014, is hereby sanctioned , in favour of Shri Faryad Bhatti, Assistant Registrar, of this Registry.

Certified that Shri Faryad Bhatti is likely to join the same same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Faryad Bhatti would have continued to officiate the same post of Assistant Registrar but for his proceedings on above leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH SHIMLA -171001

NOTIFICATION

Shimla, the 29th May, 2014

No.HHC/GAZ/ 14-326/2012.—Hon'ble the Acting Chief Justice has been pleased to grant 06 days' earned leave *w.e.f.* 2.6.2014 to 7.6.2014 with permission to prefix and suffix Sundays falling on 1.6.2014 and 8.6.2014 in favour of Ms. Monika Sombal, Civil Judge (Junior Division)-cum-JMIC (II), Hamirpur, H.P.

Certified that Ms. Monika Sombal is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Ms. Monika Sombal would have continued to hold the same post of Civil Judge (Junior Division)-cum-JMIC (II), Hamirpur, H.P., but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURTOF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla, the 31st May, 2014

No. HHC/Admn.3(391)/94.—15 days earned leave on and *w.e.f.* 10.05.2014 to 24.05.2014 (extended period) , with permission to suffix Sunday 25.05.2014, is hereby sanctioned ,ex-post-facto, in favour of Shri Anil Kumar Sharma , Secretary, of this Registry.

Certified that Shri Anil Kumar Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Anil Kumar Sharma would have continued to officiate the same post of Secretary but for his proceedings on above leave.

By order,
Sd/-
Registrar general.

HIGH COURTOF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla, the 19th May, 2014.

No. HHC/Admn.3(230)/86.—13 days earned leave for 19.05.2014 and 31.05.2014, with permission to affix Sundays falling on 18.05.2014 and 01.06.2014, is hereby sanctioned, in favour of Shri Vijay Chand Verma, Assistant Registrar, of this Registry.

Certified that Shri Vijay Chand Verma is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Vijay Chand Verma would have continued to officiate the same post of Assistant Registrar but for his proceeding on above leave.

By order,
Sd/-
Registrar General.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, 16th May, 2014

No. Sharm (A) 7-1/2005 (Awards) L-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

| Sr. No. | Case No. | Title of the Case | Date of Award |
|---------|----------|---|---------------|
| 1. | 189/2013 | S/Shri Mintu Ram V/s E.E.HPPWD, Joginder Nagar. | 20-02-2014 |
| 2. | 190/2013 | Manohar Lal V/s -do- | 20-02-2014 |
| 3. | 195/2013 | Suti Devi V/S -do- | 20-02-2014 |
| 4. | 187/2013 | Ran Singh V/S -do- | 20-02-2014 |
| 5. | 181/2013 | Secy. Changu Hydro V/s Vice President I.A Energy. | 21-02-2014 |

| | | | |
|-----|----------|---|------------|
| 6. | 17/2014 | Dharam Chand V/s E.E. HPPWD Joginder Nagar. | 22-02-2014 |
| 7. | 18/2014 | Raj Kumar V/s -do- | 22-02-2014 |
| 8. | 20/2014 | Roshan Lal V/s -do- | 22-02-2014 |
| 9. | 22/2014 | Pradhan Singh V/s -do- | 22-02-2014 |
| 10. | 23/2014 | Kanta Devi V/s -do- | 22-02-2014 |
| 11. | 161/2013 | Phula Devi V/s -do- | 24-02-2014 |
| 12. | 128/2013 | Kartar Singh V/s -do- | 24-02-2014 |
| 13. | 144/2013 | Rumla Devi V/s -do- | 24-02-2014 |
| 14. | 142/2013 | Mansa Devi V/s -do- | 24-02-2014 |
| 15. | 143/2013 | Madan Lal V/s -do- | 24-02-2014 |
| 16. | 159/2013 | Dan Singh V/s -do- | 24-02-2014 |
| 17. | 71/2013 | Khyali Ram V/s -do- | 24-02-2014 |
| 18. | 160/2013 | Devi Singh V/s -do- | 24-02-2014 |
| 19. | 165/2013 | Sardaru Ram V/s -do- | 24-02-2014 |
| 20. | 163/2013 | Inder Singh V/S -do- | 24-02-2014 |
| 21. | 167/2013 | Dinesh Kumar V/s -do- | 24-02-2014 |
| 22. | 137/2013 | Subhash Chand V/s -do- | 24-02-2014 |
| 23. | 166/2013 | Nag Pal V/s -do- | 24-02-2014 |
| 24. | 164/2013 | Ram Dev V/s -do- | 24-02-2014 |
| 25. | 179/2013 | Milap Chand V/s -do- | 24-02-2014 |
| 26. | 338/2012 | Joginder Singh V/s Mohan Singh | 25-02-2014 |
| 27. | 42/2011 | Rattan Chand V/s E.E. HPPWD, Dharampur | 28-02-2014 |
| 28. | 34/2013 | Vinod kumar V/s -do- | 28-02-2014 |

By order,
(R. D. DHIMAN),
Pr.Secretary (Labour & Employment).

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 189/2013

Shri Mintu Ram s/o Shri Jagdish Chand, r/o Village Kohra, P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H. P.

..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

20-02-2014 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that the industrial dispute involved between the parties in this reference has already been decided by this Court per Award dated 28-06-2011 passed in reference No. 160/2006 titled as Smt. Vidya Devi and others –vs- The Executive Engineer, HPPWD (B&R) Division, Joginder Nagar. For the said reason, he does not want to proceed with this reference and it be dismissed as withdrawn.

2. Ordered accordingly. Parties to bear their own costs.

-
3. The reference is answered in the aforesaid terms.
 4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
 5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 190/2013

Shri Manohar Lal s/o Shri Charan Dass, r/o Village Kohra, P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

20-02-2014 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that the industrial dispute involved between the parties in this reference has already been decided by this Court per Award dated 28-06-2011 passed in reference No. 160/2006 titled as Smt. Vidya Devi and others –vs- The Executive Engineer, HPPWD (B&R) Division, Joginder Nagar. For the said reason, he does not want to proceed with this reference and it be dismissed as withdrawn.

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 195/2013

Smt. Suti Devi w/o Shri Anoop Singh, r/o Village Amehar, P.O. Basona, Tehsil Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.

..Respondent.

20-02-2014 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. She is absent despite personal service. It is already 2.40 p.m. Since the petitioner has failed to appear and file any statement of claim/demand, the ld. A.D.A. states at bar that he does not want to file any reply.

2. The above noted facts amply demonstrate that the petitioner is not interested to pursue the matter. Consequently, she is not entitled to any relief. No break in service (as per the reference) was provided to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 187/2013

Sh. Ran Singh s/o Shri Jagat Ram, r/o Village Dhurli, P.O. Langna, Tehsil Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, Distt. Mandi, H.P.

..Respondent.

20-02-2014 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite knowledge. It is already 2.30 p.m. The petitioner has failed to file any statement of claim/demand as per the last / Court order. Ld. A.D.A. states at bar that he does not want to file any reply since no statement of claim/demand has been preferred by the claimant/petitioner.

2. As no claim petition has been filed and the petitioner is absent despite knowledge, I am satisfied that he is not interested to pursue the matter. Consequently, he is not entitled to any relief. No break in service (as per the reference) was provided to the petitioner by the respondent. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 181/2013

Secretary & President, Chanju Hydro Power Project Union, V.P.O. Tikrigarh, Tehsil Churah, Distt. Chamba, H.P. (Un-registered).

..Petitioner.

Versus

The Vice President, IA Energy Chanju-I (36MW), Tehsil Churah, Distt. Chamba, H.P.

..Respondent.

21-02-2014 Present: None for the petitioner.
Sh. Vijay Kaundal, Adv. csl. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner/claimant. He and his ld. csl. are absent despite knowledge. It is already 3.00 p.m. The petitioner/claimant has failed to file any statement of claim/demand despite the grant of two opportunities. Ld. csl. for the respondent states at bar that he does not want to file any reply since no statement of claim/demand has been preferred by the petitioner.

2. The above noted facts amply demonstrate that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. Less wages (as per the reference) were not

paid to the petitioner by the respondent. The petitioner is not entitled to any arrear. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-
Industrial Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 17/2014

Shri Dharam Chand s/o Shri Faganu Ram, r/o Village Kahali, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

22-02-2014 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite personal service. It is already 3.00 p.m. Since the petitioner has failed to appear in the Court despite service/knowledge and file any statement of claim/demand, Id. A.D.A. states at bar that he does not want to file any reply.

2. The above noted facts go to show that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. No intentional break in service was provided to the petitioner by the respondent (as per the reference) during the course of the employment. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-
Industrial Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 18/2014

Shri Raj Kumar s/o Sh. Prakam Chand, r/o Village Barnau, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

22-02-2014 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite personal service. It is already 3.00 p.m. Since the petitioner has failed to appear in the Court despite service/knowledge and file any statement of claim/demand, Id. A.D.A. states at bar that he does not want to file any reply.

2. The above noted facts go to show that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. No intentional break in service was provided to the petitioner by the respondent (as per the reference) during the course of the employment. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 20/2014

Shri Roshan Lal s/o Shri Shukru Ram, r/o Village Passal Chauntra, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

22-02-2014 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite personal service. It is already 3.00 p.m. Since the petitioner has failed to appear in the Court despite service/knowledge and file any statement of claim/demand, Id. A.D.A. states at bar that he does not want to file any reply.

2. The above noted facts go to show that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. No intentional break in service was provided to the petitioner by the respondent (as per the reference) during the course of the employment. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 22/2014

Shri Pradhan Singh s/o Shri Jatt Ram, r/o Village Rihru, P.O. Basona, Tehsil Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

22-02-2014 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite personal service. It is already 3.00 p.m. Since the petitioner has failed to appear in the Court despite service/knowledge and file any statement of claim/demand, Id. A.D.A. states at bar that he does not want to file any reply.

2. The above noted facts go to show that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. No intentional break in service was provided to the petitioner by the respondent (as per the reference) during the course of the employment. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 23/2014

Smt. Kanta Devi w/o Shri Jagdish Chand, r/o V.P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P.

.. Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

.. Respondent.

22-02-2014 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. She is absent despite personal service. It is already 3.00 p.m. Since the petitioner has failed to appear in the Court despite service/knowledge and file any statement of claim/demand, Id. A.D.A. states at bar that he does not want to file any reply.

2. The above noted facts go to show that the petitioner is not interested to pursue the matter. Consequently, she is not entitled to any relief. No intentional break in service was provided to the petitioner by the respondent (as per the reference) during the course of the employment. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 161/2013

Date of Institution : 20.9.2013

Date of Decision : 24.02.2014

Smt. Phula Devi w/o Shri Pawan Kumar, r/o Village Phalun Bhatta, P.O. Jalpehar, Tehsil
Joginder Nagar, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Phula Devi, W/O Shri Pawan Kumar, R/O Village Phalun Bhatta, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. during 2001-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged by the B&R Department as a daily wager on muster roll basis in the month of March, 2000. She worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in her name by the respondent. The latter used to engage her services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. The respondent gave her the artificial breaks from the year 2000 to 30.9.2007. The persons who were working with her (petitioner) or joined the service after her were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to her namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of her (petitioner’s) services. The persons junior to her have been regularized by the respondent earlier to her against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. She (petitioner) completed eight years of continuous service on 30.4.2008 and 10 years of continuous service on

30.04.2010. As per the policy framed/approved in Mool Raj Upadhaya's case, she is entitled to the regularization of her services as work-charge beldar w.e.f. 1st May, 2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. She is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from..... to 30.9.2007 with cost and directed to respondent to pay the wages to the applicant for breaks periods and count the said period in continuity of service of the applicant for the purpose of her regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 8 years continuous service w.e.f. 1.5.2008 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 1.5.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 2000. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. She used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous

service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 29.11.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 2001 to 2007 is/was illegal and unjustified as alleged? ..OPP.

2. Whether the claim petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Smt. Phula Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that as and when the muster roll was issued in her name, she was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to her. She denied that she has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to her. He denied that the petitioner never remained absent from her duties. He

admitted that as per the record no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.1.2000 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the month of January, 2001 to the year 2007 work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2001 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Not pressed.

ISSUE NO. 3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has no where pleaded that during the break period, she was without any work. While testifying in the Court as PW1, the petitioner has given her age as 46 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2001 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 128/2013

Date of Institution : 24.08.2013

Date of Decision : 24.02.2014

Shri Kartar Singh s/o Shri Niranjan Singh, r/o Village Mangail, P.O. Khaddar, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Kartar Singh S/O Shri Niranjan Singh, R/O Village Mangail, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f.03.07.1999 to 31.08.2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 03.7.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 03.07.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General

Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of May, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R-II. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 06.12.2013, following issues were struck:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent w.e.f. 03.07.1999 to 31.08.2007 is/was illegal and unjustified as alleged? ..OPP.

2. Whether the claim petition is not maintainable in the present form? ..OPR.

3. Whether the claim petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Kartar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Lad bharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Lad Bharol was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Lad Bharol and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of May, 1999. The respondent has not pleaded a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of May, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of July, 1999 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Taking into account my findings on issue No.1 above, it is held that the State of H.P. and Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the case. They may be proper parties.

21. This issue too is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. While testifying in the Court as PW1, the petitioner has given his age as 59 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

24. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service w.e.f. 03.7.1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 144/2013

Date of Institution : 09.9.2013

Date of Decision : 24.02.2014

Smt. Rumla Devi w/o Shri Tek Chand, r/o Village and P.O. Khaddar, Tehsil Lad Bharol,
District Mandi, H.P.*Petitioner.*

Versus

Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Rumla Devi W/O Shri Tek Chand, R/O Village and P.O. Khaddar, Tehsil Lad Bharol, District Mandi, H.P. w.e.f. year, 2001 to 31.08.2007 by the Executive Engineer, B & R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 01.01.2001 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 01.01.2001 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get the employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General

Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of January, 2001. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R-II. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 06.12.2013, following issues were struck:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent w.e.f. year 2001 to 31.08.2007 is/was illegal and unjustified as alleged? ..OPP.

2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Smt. Rumla Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Lad Bharol was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Lad Bharol and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in January, 2001.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of January, 2001 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2001 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Taking into account my findings on the issue No.1 above, it is held that the State of H.P. and Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the case. They may be proper parties.

21. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. While testifying in the Court as PW1, the petitioner has given her age as 53 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

24. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2001, except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
*Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 142/2013

Date of Institution : 09.9.2013

Date of Decision : 24.02.2014

Smt. Mansa Devi w/o Shri Sant Ram, r/o Village Kanahrag, P.O. Panjalag, Tehsil Lad Bharol, District Mandi, H.P.Petitioner.

Versus

Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Mansa Devi W/O Shri Sant Ram, R/O Village Kanahrag, P.O. Panjalag, Tehsil Lad Bharol, District Mandi, H.P. w.e.f. 03.01.1999 to 31.08.2007 by the Executive Engineer, B & R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 03.01.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 03.01.1999 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get the employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen.

The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of September, 1998. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R-II. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 06.12.2013, following issues were struck:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent w.e.f. 03.01.1999 to 31.08.2007 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Smt. Mansa Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Lad bharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Lad Bharol was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Lad Bharol and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in September, 1998.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of January, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 1999 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Taking into account my findings on the issue No.1 above, it is held that the State of H.P. and Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the case. They may be proper parties.

21. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. While testifying in the Court as PW1, the petitioner has given her age as 54 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

24. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service w.e.f. 03.01.1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 143/2013

Date of Institution : 09.09.2013

Date of Decision : 24.02.2014

Shri Madan Pal s/o Shri Prakam Ram, r/o Village and P.O. Karshal, Tehsil Joginder Nagar,
Distt. Mandi, H.P.Petitioner.

Versus

Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Madan Pal S/O Shri Prakam Ram, R/O Village and P.O. Karshal, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f. 01.01.1998 to 31.08.2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.1.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.01.1998 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General

Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of June, 1998. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R-II. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 06.12.2013, following issues were struck:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent w.e.f. 01.01.1998 to 31.08.2007 is/was illegal and unjustified as alleged? ..OPP.

-
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Madan Pal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Lad Bharol was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Lad Bharol and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geeta Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of June, 1998. The respondent has not pleaded a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Lad Bharol, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the month of June, 1998 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of June, 1998 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. Taking into account my findings on issue No.1 above, it is held that the State of H.P. and Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the case. They may be proper parties.

21. This issue too is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

24. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service w.e.f. June, 1998 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 159/2013
 Date of Institution : 20.9.2013
 Date of Decision : 24.02.2014

Shri Dan Singh s/o Shri Prem Singh, r/o Village Chhatar, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
 ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Dan Singh S/O Shri Prem Singh, R/O Village Chhatar, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. during 1999-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year 1999 to 30.09.2007. The persons who were working with him

(petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the policy framed/approved in Mool Raj Upadhyaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- "(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 with cost and directed to respondent to pay the wages to the applicant for breaks periods and count the said period in continuity of service of the applicant for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 8 years continuous service w.e.f. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of November, 1998. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks

were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 29.11.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.

2. Whether the claim petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Dan Singh (petitioner) stepped into the witness box as PW1.

In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 25.1.1998 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the month of January, 1999 to the year 2007 work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 1999 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

18. Not pressed.

ISSUE NO. 3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 71/2013

Date of Institution : 31.7.2013

Date of Decision : 24.02.2014

Shri Khyali Ram s/o Shri Khindu Ram, r/o Village Nergharbasra, P.O. Majharnu, Tehsil Joginder Nagar, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services Shri Khyali Ram S/O Shri Khindu Ram, R/O Village Nergharbasra, P.O. Majharnu, Tehsil Joginder Nagar, District Mandi, H.P. during 2002-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year, 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his

services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year, 1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the policy framed/approved in Mool Raj Upadhyaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of September, 1999. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide

notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhyaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhyaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 31.10.2013, following issues were framed:

1. Whether time to time termination/giving breaks in service to the petitioner by the respondent as per reference is/was illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Shri Khyali Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the year, 1999 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the year, 2002 to the year, 2007 work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the year, 2002 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

18. Not pressed.

ISSUE NO. 3

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period. 21. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year, 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the year, 2002 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of

any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 160/2013
 Date of Institution : 20.9.2013
 Date of Decision : 24.02.2014

Shri Devi Singh s/o Shri Bhengu Ram, r/o Village Chhater, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Devi Singh, S/O Shri Bhengu Ram, R/O Village Chhater, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. during 1999-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year, 1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the policy framed/approved in Mool Raj Upadhyaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 with cost and directed to respondent to pay the wages to the applicant for breaks periods and count the said period in continuity of service of the applicant for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 8 years continuous service w.e.f. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of November, 1998. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 29.11.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.

2. Whether the claim petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Devi Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 25.5.1998 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the month of January, 2000 to the year 2007 work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The

petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2000 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Not pressed.

ISSUE NO. 3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 56 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 165/2013
Date of Institution : 20.9.2013
Date of Decision : 24.02.2014

Shri Sardaru Ram s/o Shri Saran alias Sarvan Singh, r/o Village Dhelu Dhalar, P.O.
Joginder Nagar, Tehsil Joginder Nagar, District Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sardaru Ram, S/O Shri Saran alias Sarvan Singh, R/O Village Dhelu Dhalar, P.O. Joginder Nagar, Tehsil Joginder Nagar, District Mandi, H.P. during 1999-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year 1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the policy framed/approved in Mool Raj Upadhyaya’s case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- (i) The Hon’ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 with cost and directed to respondent to pay the wages to the applicant for breaks periods and count the said period in continuity of service of the applicant for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 8 years continuous service w.e.f. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1999. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhyaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhyaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 29.11.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Sardaru Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 06.3.1999 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to the year 2007, work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the

list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Not pressed.

ISSUE NO. 3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 50 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

7. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 163/2013
Date of Institution : 20.9.2013
Date of Decision : 24.02.2014

Shri Inder Singh s/o Shri Galu Ram, r/o Village Barnai, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
.Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Inder Singh, S/O Shri Galu Ram, R/O Village Barnai, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. during 1999-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year 1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the policy framed/approved in Mool Raj Upadhyaya’s case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 with cost and directed to respondent to pay the wages to the applicant for breaks periods and count the said period in continuity of service of the applicant for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 8 years continuous service w.e.f. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to

the applicant w.e.f. 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.

(iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.

(iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1999. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 29.11.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Inder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 06.1.1999 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the month of January, 2000 to the year 2007 work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2000 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Not pressed.

ISSUE NO. 3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the

reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 52 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 167/2013
Date of Institution : 20.9.2013
Date of Decision : 24.02.2014

Shri Dinesh Kumar s/o Shri Hans Raj, r/o Village Lot-Seri, P.O. Joginder Nagar, Tehsil
Joginder Nagar, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Dinesh Kumar S/O Shri Hans Raj, R/O Village Lot-Seri, P.O. Joginder Nagar, Tehsil Joginder Nagar, District Mandi, H.P. during 1999-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year 1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the policy framed/approved in Mool Raj Upadhyaya’s case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 with cost and directed to respondent to pay the wages to the applicant for breaks periods and count the said period in continuity of service of the applicant for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 8 years continuous service w.e.f. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of November, 1998. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent’s) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent’s) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya’s case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya’s case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 29.11.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Dinesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 25.11.1998 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the month of January, 2000 to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non- availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2000 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Not pressed.

ISSUE NO. 3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed

to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 53 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year, 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 137/2013

Date of Institution : 29.8.2013

Date of Decision : 24.02.2014

Shri Subhash Chand s/o Shri Hari Singh, r/o Village & P.O. Dogh, Tehsil Joginder Nagar,
District Mandi, H.P.
..Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Subhash Chand S/O Shri Hari Singh, R/O Village & P.O. Dogh, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. during 1999-2007, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the year 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year, 1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As

per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of August, 1998. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen, whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered

one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 31.10.2013, following issues were framed:

1. Whether time to time termination/giving breaks in service to the petitioner by the respondent as per reference is/was illegal and unjustified as alleged? ..OPP.

2. Whether the petition is not maintainable in the present form? ..OPR.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS ISSUE NO.1

8. Shri Subhash Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the year 1998 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the year 1999 to the year 2007 work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non- availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the year 1999 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Not pressed.

SSUE NO. 3

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP

No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 33 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

21. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the year 1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
*Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 166/2013

Date of Institution : 20.9.2013

Date of Decision : 24.02.2014

Shri Nag Pal s/o Shri Mangat Ram, r/o Village Pehlun, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Nag Pal S/O Shri Mangat Ram, R/O Village Pehlun, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. during 2001-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the month of January, 1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the month of January, 1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.05.2008 and 10 years of continuous service on

31.05.2010. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st June, 2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- "(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 with cost and directed to respondent to pay the wages to the applicant for breaks periods and count the said period in continuity of service of the applicant for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 8 years continuous service w.e.f. 01.06.2008 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.06.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of June, 2000. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with

240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 29.11.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 2001 to 2007 is/was illegal and unjustified as alleged? ..OPP.

2. Whether the claim petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Nag Pal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He

admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 06.1.1999 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the month of January, 2001 to the year 2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the nonavailability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2001 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Not pressed.

ISSUE NO. 3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at

Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year, 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2001 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 164/2013
 Date of Institution : 20.9.2013
 Date of Decision : 24.02.2014

Shri Ram Dev s/o Shri Shyam Chand, r/o V.P.O. Nergharbasra, Tehsil Joginder Nagar,
 District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Ram Dev S/O Shri Shyam Chand, R/O V.P.O. Nergharbasra, Tehsil Joginder Nagar, District Mandi, H.P. during 2000-2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. 06.8.1999. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks w.e.f. 06.8.1999 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not

followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 05.08.2007 and 10 years of continuous service on 05.08.2009. As per the policy framed/approved in Mool Raj Upadhyaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 6th August, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 06.08.1999 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 06.08.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 06.08.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of August, 1999. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the

petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 29.11.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent during the years 2000 to 2007 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Ram Dev (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 06.08.1999 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the month of January, 2000 to the year 2007 work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2000 to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Not pressed.

ISSUE NO. 3

19. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division,

Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

20. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 179/2013
 Date of Institution : 17.10.2013
 Date of Decision : 24.02.2014

Shri Milap Chand s/o Shri Budhi Singh, r/o Village Jalad, P.O. Karsal, Tehsil Joginder Nagar, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.
 ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services Shri Milap Chand S/O Shri Budhi Singh, R/O Village Jalad, P.O. Karsal, Tehsil Joginder Nagar, District Mandi, H.P. during year 1999 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. 06.4.1999. He worked under the Assistant Engineer, HPPWD Sub Division, Lad Bharol. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent upto 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from the year, 1999 to 30.09.2007. The persons who were working with him

(petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008. As per the policy framed/approved in Mool Raj Upadhyaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- "(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 1999 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2011 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of April, 1999. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks

were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 16.12.2013, following issues were framed:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from the year 1999 to 2007 is/was illegal and unjustified as alleged? ..OPP.

2. Whether the petition is not maintainable in the present form? ..OPR.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Milap Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of May, 1999 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to the year 2007, work for the entire month or 240 days was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to the year 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. This issue is decided in favour of the petitioner and against the respondent.

18. Not pressed.

ISSUE NO. 3

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. In the petition, the petitioner has no where pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 53 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

21. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue too is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to the year, 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his

services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (Camp at Mandi)

Ref: No. : 338/2012

Sh. Joginder Singh s/o Sh. Besria Ram, r/o Village and P.O. Barin, Sub Tehsil Baldwara,
 Distt. Mandi, H.P.Petitioner.

Versus

1. Sh. Mohan Singh s/o Sh. Dharam Chand Guleria, The Manager M/s Satluj Motors,
 Head Office NH-21 Lunapani, P.O. Bhangrotu, Tehsil Sadar, Distt. Mandi, H.P.

2. The Manager, M/S Satluj Motors, Branch workshop/Office Manali in Hotel near
 Rangri Manali, P.O. Manali, Tehsil Manali, Distt. Kullu, H.P.

..Respondents..

25-03-2014 Present: Sh. S.K. Arya, Adv., csl. for the petitioner.
 Respondents already ex parte.

The case is listed for arguments today, but the ld. csl. for the claimant/petitioner has made the below given statement in the Court :-

“ I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. My client will issue a fresh demand notice to the employer for the redressal of his grievances.”

2. Ordered accordingly. Parties to bear their own costs.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA),
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 42/2011

Date of Institution : 03.05.2011

Date of Decision : 28.02.2014

Shri Rattan Chand s/o Shri Balwant Kumar alias Balu Ram, r/o Village Hayor, P.O. Cholethara, Tehsil Sarkaghat, District Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Rattan Chand S/O Sh. Balwant Kumar alias Balu Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated- 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar by the respondent on 01.1.1999. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned

Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner's) illegal retrenchment and the retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner's) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “(i) That the notification dated 14/2/2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set-aside
- (ii) The permission granted by the specified authority-cum-Chief Engineer, Central Zone Mandi under section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- (iii) The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.1.1999 and he worked as such up-to 07.7.2005. He was retrenched from service

w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.09.2011, following issues were struck by my ld. Predecessor:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Dispute Act, 1947 is illegal and unjustified as alleged. If so, to what effect? ..OPP.
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect? ..OPP.
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect? ..OPR.
4. Whether the reference is not maintainable as alleged. If so, to what effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Rattan Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD Division, Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of the services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

12. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, he accorded the permission to retrench a number of workmen.

13. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

14. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

15. Ex. RW1/E is the mandays chart relating to the petitioner.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.1.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority list placed on the record, it can be gathered that the persons junior to the petitioner are serving the

respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. 19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

23. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

24. Not pressed.

RELIEF (ISSUE NO.5)

25. As a sequel to my findings on the issues No.1 to 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 34/2013
 Date of Institution : 05.04.2013
 Date of Decision : 28.02.2014

Shri Vinod Kumar s/o Shri Chaudhary Ram, r/o Village Dhaloun, P.O. Tanihar, Tehsil Sarkaghat, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
 For the Respondent : Sh. Sanjeev Singh Rana, ADA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Vinod Kumar S/O Shri Chaudhary Ram, R/O Village Dhaloun, P.O. Tanihar, Tehsil Sarkaghat, District Mandi, H.P. by The Executive Engineer, H.P.P.W.D. (B&R) Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 8-7-2005, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar by the respondent on 01.11.1999. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been

regularized. The respondent has failed to adhere to the principle of 'last come first go'. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner's) illegal retrenchment and the retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner's) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “[a]. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set-aside
- [b] The permission granted by the Specified Authority-cum-Chief Engineer, Central Zone Mandi under Section 25[N] of the Industrial Disputes Act, 1947 for the retrenchment of the petitioner may kindly be declared null and void and be set aside and the retrenchment of petitioner be declared null and be set aside.
- [c] The petitioner may kindly be ordered to be reinstated with full back wages, seniority and other consequential service benefits and further there services be regularized as per the provisions of law.
- [d] or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.11.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. Rejoinder not filed by the petitioner.

5. Per order dated 27.08.2013, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.07.2005 is illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No.4 : Not pressed.

Issue No. 5 : Not pressed.

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Shri Vinod Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD Division, Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, he accorded the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

13. Ex. RW1/E is the mandays chart relating to the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.11.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

15. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

16. From the statement made by the respondent (RW1) coupled with the seniority list placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

17. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 AND 5

19. Not pressed.

ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

23. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the

seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of February, 2014.

(RAJAN GUPTA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

